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Attorneys for Defendant
Goldwater Bank, N.A.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

MARK AUSSIEKER, individually and on
behalf of all others similarly situated,

Plaintiffs,

vs.

GOLDWATER BANK, N.A., Does 1-10
inclusive

Defendant.

Case No. 2:22-CV-00851-MCE-DB

**ORDER GRANTING DEFENDANT
GOLDWATER BANK, N.A.'S
RENEWED MOTION TO DISMISS
PLAINTIFF'S AMENDED
COMPLAINT [ECF No 36]**

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11 The Court having reviewed the submissions of the parties regarding Defendant
12 Goldwater Bank, N.A.'s ("Goldwater") Renewed Motion to Dismiss Plaintiff's
13 Amended Complaint pursuant to Fed. R. Civ. P. 12(b)(6) (ECF No. 36) finds that
14 Plaintiff's Amended Complaint (ECF No. 4) fails to state a claim upon which relief
15 may be granted. For the reasons set forth below, Plaintiff's Amended Complaint is
16 DISMISSED WITH PREJUDICE and without leave to amend.¹

17 Plaintiff's Amended Complaint seeks relief under the Telephone Consumer
18 Protection Act ("TCPA"), specifically 47 U.S.C. § 227(b)(1)(A) and § 227(b)(1)(B).
19 In his Opposition, Plaintiff admits that his Amended Complaint does not plausibly
20 allege that the single, text message alleged was sent using an automatic telephone
21 dialing system ("ATDS") as that term has been interpreted by the Ninth Circuit
22 following the United States Supreme Court's decision in *Facebook, Inc. v. Duguid*,
23 141 S. Ct. 1163, 1167 (2021). That is, Plaintiff concedes (and his allegations
24 demonstrate) that Goldwater's dialing equipment did not generate telephone numbers
25 using a random or sequential number generator, as is required to state a claim under
26 47 U.S.C. § 227(b)(1)(A). *See Borden v. eFinancial, LLC*, 53 F.4th 1230, 1234 (9th


27 ¹ Plaintiff's Request for Judicial Notice ("RJN") is DENIED. ECF No. 40 (RJN).
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1 Cir. 2022); *Trim v. Reward Zone USA LLC*, No. 22-55517, 2023 WL 5043724, at *1
2 (9th Cir. Aug. 8, 2023).

3 Further, Plaintiff's contention that the alleged text message utilized "an
4 artificial or prerecorded voice" under 47 U.S.C. § 227(b)(1)(A) or § 227(b)(1)(B) is
5 unsupported by law or any reasonable reading of the TCPA. *See, e.g., Trim v. Reward*
6 *Zone USA LLC*, 76 F.4th 1157 (9th Cir. 2023). As both causes of action alleged in
7 Plaintiff's Amended Complaint are legally insufficient, Plaintiff's Amended
8 Complaint must be dismissed for failure to assert a plausible claim for relief pursuant
9 to Fed. R. Civ. P. 12(b)(6). Plaintiff concedes he cannot amend in order to state a
10 valid claim. Accordingly, Defendants' Motion to Dismiss (ECF No. 36) is
11 GRANTED without leave to amend. The Clerk of the Court is directed to close this
12 case.

13 IT IS SO ORDERED.

14 Dated: May 13, 2024

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16 MORRISON C. ENGLAND, JR.
17 SENIOR UNITED STATES DISTRICT JUDGE
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